

Foothill Transit Executive Board

MINUTES

The regular meeting of the Foothill Transit Executive Board was held Friday, June 27, 2008, at the Foothill Transit Board Room, 2nd Floor, 100 South Vincent Avenue, West Covina.

President Delach called the meeting to order at 8:05 a.m. The following members were present, constituting a quorum of the Executive Board:

Peggy Delach, President
Michael De La Torre, Vice President
Paula Lantz
Roger Chandler
Lola Storing

Staff and Guests present:

Doran Barnes, Executive Director
Kevin McDonald, Deputy Executive Director
Bob Arthur, Director of Special Projects
David Reyno, Director of Government Relations
Darold Pieper, General Counsel
Edward Gill Jr., Special Counsel
Lee Millen, Deputy Secretary
Ed Hernandez, 57th District, California State Assembly
Linda Bell, President, First Transit
Nick Promponas, First Transit Senior Vice President
Peter Greenberg, General Manager
Wayne Fritz, General Manager
Linda Bybee, L.A. Metro

PLEDGE OF ALLEGIANCE

President Delach led those present in the Pledge of Allegiance.

APPROVAL OF MINUTES FOR THE REGULAR MEETING OF MAY 23, 2008

The minutes listed above were approved as submitted, with the following correction:

On Page 6, Volumetric Excise Tax Credit Update, "Vice President De La Torre recused himself...Sempra Energy, Southern California Gas Company ~~SCE~~ ...".

Motion: Vice President De La Torre, seconded by Member Chandler
Vote: Unanimously carried

PRESENTATIONS:

Contractors' Employee Recognition

Wayne Fritz, General Manager, introduced and recognized the Arcadia location MV Transportation Operator & Employee of the Month: Eduardo Guerrero, Employee of the Month; and Ricky Strange, Operator of the Month (2nd recognition).

Peter Greenberg, General Manager, introduced and recognized the Pomona location First Transit Operator of the Month: Carol Gray, Operator of the Month (2nd recognition).

The Executive Board commended the awardees.

Legislative Update by Assembly Member Ed Hernandez

David Reyno, Director of Government Relations, introduced Dr. Ed Hernandez, California State Assemblyman, 57th District, Chair of the San Gabriel Valley Legislative Caucus, and Member of the Health & Budget Subcommittee.

Assemblyman Hernandez introduced AB2009 that proposes the use of compressed natural gas by local agencies in the operation of public transit services shall be exempt from any taxes imposed on fuel. When Doran Barnes initially requested his help in addressing the 10/605 Fwy interchange, he recognized that a failing infrastructure and increased populations required alternative transportation modes. As an advocate of public transportation, he proposed AB2009 to address the need for clean fuel without increased bus fares due to a utility user tax.

Doran Barnes, Executive Director, presented an art piece on behalf of Foothill Transit to Assemblyman Hernandez in appreciation for his advocacy of improved public transportation. President Delach thanked Assemblymember Hernandez for his support of Foothill Transit.

Recognition of the Pomona Facility as the Recipient of First Transit's West Region's Outstanding Safety Location Award

Nick Promponas, First Transit Senior Vice President, reported that Foothill Transit's Pomona location was the sole recipient from California recognized by First Transit as one of 25 agencies on the West coast that excelled in safety. The award, given annually to 25 locations, is based on Leadership, Creativity, Safety Culture, and Good Safety Performance.

Mr. Promponas introduced Linda Bell, the new President of First Transit, who is replacing former President Michael Murray who was promoted to Chief Executive Officer of First Transit's American Businesses. Ms. Bell greeted the Executive Board, commended Foothill Transit's Pomona employees for their award, and voiced her interest in continuing to meet Foothill Transit's expectations of First Transit.

President Delach recognized Carol Herrera, Councilmember, City of Diamond Bar.

PUBLIC COMMENT

There was none.

CONSENT CALENDAR:

The Executive Board adopted Consent Calendar items 7 through 17, and pulled item 10 for further discussion.

Motion: Member Storing, seconded by Member De La Torre
Vote: Unanimously carried

INVITATION TO CITY OF PASADENA TO JOIN THE FOOTHILL TRANSIT JPA

Member Lantz questioned staff's decision to forward a letter to Mayors regarding the invitation to the City of Pasadena to join the Foothill Transit JPA; the City Councils should have been contacted also. Doran Barnes advised that the letter has not been mailed, and a revised letter can include the City Council.

President Delach suggested that the letter be mailed to City Managers instead of the Mayors. Member Chandler suggested that a City of Pasadena representative advocate their membership with the member cities.

Following suggestions by Darold Pieper, General Counsel, regarding the contents of the letter, Doran Barnes agreed to forward a letter to the Mayors and City Council members with recommended Board revisions and clarifications, including an extended timeline for comments. A decision on future steps to be taken can be decided at the Fall Governing Board meeting.

The Executive Board received and filed an update on the status of Foothill Transit's invitation to the City of Pasadena to join the Foothill Transit Joint Powers Authority (JPA), and directed staff to incorporate into the proposed letter Board revisions and clarifications.

Motion: Member Storing, seconded by Vice President De La Torre
Vote: Unanimously carried

REGULAR AGENDA:

CONGESTION REDUCTION DEMONSTRATION INITIATIVE

David Reyno, Director of Government Relations, reported that on April 24, 2008, the Los Angeles County Metropolitan Transportation Authority's (Metro) Board of Directors approved entering into negotiations with the USDOT for the award of \$213.6 million in FY 2007 bus and bus facility money that was originally granted to New York City, but was not obligated because the New York State Legislature did not approve a plan for congestion pricing in Manhattan. In exchange, Los Angeles County and CalTrans agree to convert High Occupancy Vehicle (HOV) lanes to High Occupancy Toll (HOT) lanes. Specific sections of Interstates 10 and 210 would be converted and if additional funding becomes available Interstate 110 would also be included. The Metro Board of Directors approved moving forward with the project by voting unanimously in favor of drawing up a Memorandum of Understanding (MOU) with the USDOT. The California State Legislature and Governor have until October 15, 2008, to approve the HOT lanes conversion.

On June 2 the USDOT notified Metro of a \$3 million reduction to the \$213.6 million due to a funding commitment included in a SAFETEA0LU Technical Corrections Bill. On June 14, a meeting of the San Gabriel State Legislative Caucus was held in West Covina to brief the public and legislators on the Initiative by representatives from Metro, CalTrans and the UCLA Department of Urban Planning as well as discuss the positive and negative impacts such toll roads may have on the San Gabriel Valley.

Linda Bybee, MTA, showed a DVD presentation on the Congestion Reduction Demonstration Initiative. A \$200 million federal grant would benefit LA Metro and other agencies including Foothill Transit. The grant would provide monies for new vehicle purchases, would restore integrity to HOV lanes, and provide a lot of opportunities for Foothill Transit. If the monies are not accepted, the City of Chicago would be next in line to receive the grant.

Doran Barnes advised that grant monies would provide the equivalent of 15-20 years of monies to effect changes in Foothill Transit.

Member Lantz noted that if LA Metro is not willing to commit to the Gold Line, it seems that the San Gabriel Valley body of elected officials will not be willing to commit to the demonstration project. In effect, LA Metro is willing to use grant monies but will not listen to San Gabriel Valley concerns. In addition, Assemblymember Hernandez is not willing to support this project until Metro is willing to support the Gold line.

Ms. Bybee advised that even with the advent of the Gold Line congestion will remain. Mr. Reyno reported that Metro delayed approval of the Gold Line to determine first voters' approval of a sales tax for various programs. Mr. Barnes suggested that the Executive Board could defer on its decision until the next scheduled meeting and request that John Fasana report on this issue in that he has championed the Gold Line and supports the Demonstration Project.

Member Chandler suggested that Foothill Transit accept monies available. Mr. Barnes noted that the final decision on this issue rests in Sacramento. Mr. Reyno noted that a no vote by the Executive Board would send a loud message in that Congresswomen Solis and Napolitano could note that the primary beneficiary of the grant monies is refusing to approve the Project, and this in effect could kill the initiative.

Following further discussion, the Executive Board voted to adopt a support position on the U.S. Department of Transportation's (USDOT) Los Angeles County Congestion Reduction Demonstration Project.

Motion: President Delach, seconded by Member Chandler
Vote: Ayes: Member Chandler
Noes: President Delach, Members De La Torre, Lantz and Storing

The motion failed.

FOOTHILL TRANSIT ROSE BOWL SERVICE UPDATE

Kevin McDonald, Deputy Executive Director, reported that Foothill Transit has provided shuttle service between the Parsons Engineering Building in Pasadena and the Rose Bowl for a number of years, and the RBOC has subsidized that service. Foothill Transit's Rose Bowl service has become well known to game patrons and it has provided the organization with significant positive public relations impact. A number of customers who use the service to get to and from the games are not regular transit riders but are exposed to Foothill Transit, the quality of its service, and the Foothill Transit "brand".

The service provided in past years was compliant with then-existing FTA guidelines, and in 2007, Foothill Transit entered into a three-year agreement with the RBOC for provision of service to the Rose Bowl. On January 14, 2008 the FTA made revisions to the rule regarding charter service, and that rule went into effect on April 30, 2008, nullifying the existing agreement with the RBOC. The rule states that any transportation that meets the following criteria is considered to be charter service:

- a. It is provided by a recipient of federal transportation dollars to the public for events or functions that occur on an irregular basis or for a limited duration; and
- b. It is paid for in whole or in part by a third party.

With the UCLA Football season rapidly approaching, Foothill Transit and the RBOC will need to decide how best to address the transportation challenges that the new regulations present.

Historically, customers wishing to be transported to the Rose Bowl would board a Foothill Transit bus at the Parsons Engineering Building parking lot in Pasadena and be transported free of charge to the Bowl with the service fully subsidized by the RBOC. Foothill's agreement with the RBOC had been based on them subsidizing the cost of the service for a predetermined number of games at a predetermined hourly rate for

service. This agreement would not comply with the FTA's new charter regulations.

In light of the new regulation, there are three possible options that would allow Foothill Transit to provide service to the Rose Bowl for the 2008 Football season: (1) Provide the service without funding from the RBOC; (2) Register on an FTA website to provide charter service, however, a number of private operators already have registered in Foothill Transit's geographic area that would preclude Foothill's participation, and service provided may not include clean-air, two-door transit style vehicles; and (3) The new regulation also allows a public transit agency to enter into an agreement with all RCPs when it is requested to provide charter service. To date, the FTA website shows that there are 104 RCPs within Foothill Transit's service area who may be available to provide the service.

The projected cost including fuel to run the upcoming season of the Rose Bowl shuttle service is \$200,000. If Foothill Transit were to provide the service as regular transit service, an estimated \$84,000 to \$210,000 in revenue would be generated based on prior years' ridership levels of 7,000 per game each way. If it is possible to enter into an agreement with the RBOC to provide the service within the new charter regulations, Foothill Transit's rates to provide the service would ensure that the service is revenue neutral.

Staff recommends that the Executive Board authorize staff to pursue either of the following options regarding the provision of Foothill Transit service to the Rose Bowl for the 2008 UCLA Football season.

- a. Provide the service as regular transit service without a subsidy from the Rose Bowl Organizing Committee (RBOC); or
- b. Provide the service as subsidized charter service within the new Federal Transit Administration (FTA) guidelines.

President Delach commented that the shuttle to the Hollywood Bowl is very convenient and serves as a great role model for this kind of charter service. Edward Gill, Special Counsel, noted that the one-year agreement with Hollywood Bowl would not work with the Rose Bowl service because of dissimilar Agreements. However, a decision needs to be made soon in that the first game is scheduled on Labor Day.

Darold Pieper, General Counsel, advised that the contract should be continued for another year in that a multi-year contract was negotiated in good faith. However, based on discussions with UCLA and the RBOC, they understand that future service might not be possible.

Following discussion, the Executive Board approved staff's above recommendation.

Motion: Member Chandler, seconded by Vice President De La Torre
Vote: Unanimously carried

WEST COVINA PARK AND RIDE PROJECT

Bob Arthur, Director of Special Projects, reported that at the May meeting the Executive Board received an update and status report on the West Covina Park and Ride project. At that time it was indicated that the FTA, Foothill Transit's funding partner on the project, had completed its review of the draft Environmental Assessment (EA) report and that the environmental consultants had already provided responses. Additionally, the Board was informed that copies of the draft document were delivered to all of the businesses and property owners within a 300 foot radius of the project site, numerous state agencies, the building tenants, and all of the agency's member cities. Additionally, an announcement of the public hearing scheduled for June 11th was included in the correspondence to each entity.

Three individuals attended the June 11th public meeting where a presentation about the project and the required review of environmental areas for a project of this nature was presented. To date, two written comments have been received and an attendee offered a positive comment on the project. The public comment period on the draft EA closes at 4:00 p.m. on June 23rd. The final report will contain responses to the comments received and then it will be delivered to the FTA for their final review and approval. A report on additional comments received to the EA will be provided to the Board at the June 27 regular meeting.

Upon receiving the necessary project approvals from the city and the FTA, staff will work with Watry Design to develop the final phase of the engineering design requirements for the project and present a recommendation to the Executive Board.

The final phase of work will be the basis for the development of the plans and specifications for construction of the project and additional project oversight and administrative services required by Watry Design.

Funding for this project is included in the approved Foothill Transit Business Plan. It should be noted that timing for the FTA approval of the environmental assessment is on a critical path as \$5,075,393 in grant funding for this project is due to lapse on September 30, 2008.

Staff recommends that the Executive Board receive and file this status report on the West Covina Park and Ride project.

The Executive Board adopted staff's above recommendation.

Motion: Member Chandler, seconded by Member De La Torre
Vote: Unanimously carried

(Member Lantz was excused from the meeting.)

FIFTEEN YEAR FINANCIAL PLAN

Kevin McDonald, Deputy Executive Director, provided a power point presentation on the 15-year Financial Plan and explained key issues and assumptions used in the Plan (copy on file).

One of the biggest challenges that Foothill Transit faces in developing this 15-Year Financial Plan is the uncertainty in the availability and levels of local funding. Foothill Transit and the other municipal operators in Los Angeles County receive State Transit Assistance (STA) and local sales tax dollars allocated by the Los Angeles County Metropolitan Transportation Authority (Metro) in their role as the regional planning and programming agency, using the Formula Allocation Procedure (FAP).

During the FY08 budgeting process the state redirected \$1.25 billion from the STA account to fund services previously funded by the state's general fund. This year the state again finds itself with an estimated \$20 billion deficit. It is anticipated that the state will again transfer funds from the STA account to fund general fund services. While Foothill Transit has not included the STA funding in its FY09 Business Plan, a balanced FY10 budget at current service levels will not be possible if this funding source is further diminished.

The Metro board approved changes to the FAP allowing regional transit operators to increase fares without the risk of a reduction in their FAP allocation. The Metro Board also approved the Municipal Operators Service Improvement Plan (MOSIP) funding indefinitely, securing annual funding of approximately \$4 million. This funding source had previously been subject to annual board approval. The 15-Year plan assumes a modest 2.5 percent increase in sales tax based funding sources. These include STA as previously mentioned, Transportation Development Act (TDA), Proposition A and Proposition C funding. While this is a modest proposed increase it is possible that these funding sources could remain flat or decrease.

The shortage of local funding for operations and the continued shortage of local matching funds for federal capital purchases are major concerns. Based on current revenue projections it may not be possible to maintain current service levels past FY10 without the use of reserves. The use of reserves would allow operations to continue for one to two more years at current service levels.

The voters approved Proposition 1B, a statewide bond measure to fund improvements to public transit. Foothill Transit has applied for and qualified for approximately \$6 million of these funds which are included in the current business plan. These funds are programmed primarily for the West Covina Park and Ride structure to meet the local funding requirement of federal grants. It is anticipated that Foothill Transit will be eligible for an additional \$24 million of Proposition 1B funds in future years as other projects are approved.

Major Assumptions – The major assumptions included in the proposed 15-Year Financial Plan include:

1. No increase in service;
2. A slight increase in passenger boardings (1.0 percent annually through FY17 and then at random intervals);
3. Fare increases of seven percent every third year; and
4. Cost increases based on today's economic conditions.

Grant revenue increases of 2.5 percent annually are conservative, while estimated cost increases reflect anticipated future increases in CPI. This was done so that operating and capital funding shortages would be indicated in all likelihood before they actually occurred.

Based on the assumptions in the 15-Year Financial Plan, Foothill Transit will be able to continue operations at existing levels for three more years into 2012 using LAIF reserves. At that time service reductions will become necessary if additional funding is not secured. Alternately, if reserves are to be maintained, service adjustments and additional revenues will be required sooner. Again, the uncertainty in the availability of local funds and the uncertainty in how local funding will be allocated make developing a 15-Year Financial Plan extremely difficult.

At current levels of service Foothill Transit will be able to fund capital projects through FY11 unless MOSIP is needed to support operations. Thereafter, \$15 million, including \$5 million of MOSIP will be available for capital projects.

Staff recommends that the Executive Board receive and file the 15-Year Financial Plan.

The Executive Board adopted staff's above recommendation.

Motion: Member Storing, seconded by Member Chandler
Vote: Unanimously carried

CLEAN ENERGY AGREEMENTS

Darold Pieper advised that Vice President De La Torre has recused himself from this agenda item in that he works for Sempra Energy, Southern California Gas Company.

Edward Gill, Special Counsel, reported that the federal government provides a VETC of \$0.50 per gasoline gge for alternative fuels, such as CNG, that are used to operate motor vehicles. This credit is applicable to the CNG Foothill Transit uses to fuel its buses. A dispute has arisen between Foothill Transit and Clean Energy, Foothill's CNG fueling supplier, as to the entity that is entitled to receive this credit from the federal government. Clean Energy believes that they are entitled to the credit and have applied for and received the credit since October 1, 2006. After this situation came to staff's attention, staff concluded that Foothill Transit should be entitled to the credit.

Staff recommends that the Executive Board:

1. Authorize the Executive Director to terminate a portion of Contract No. 05-006 with Clean Energy to permit Foothill Transit to purchase natural gas from an entity other than Clean Energy at Foothill Transit's CNG fueling facility in Arcadia.
2. Authorize the Executive Director to invoke the provision of Lease Agreement 01-024 with Clean Energy which permits Foothill Transit to secure its own natural gas supplies at the CNG fueling facility that Foothill Transit leases from Clean Energy in Pomona.
3. Authorize the Executive Director to do either of the following:
 - a. Enter into negotiations with Clean Energy for a contract amendment which will provide for a 50-50 percentage split of the gross Volumetric Excise Tax Credit (VETC) Clean Energy claimed between October 1, 2006 and June 30, 2008 and that will provide that Foothill Transit's share be credited to Foothill Transit by way of an appropriate reduction in the maintenance cost at the Pomona Operations and Maintenance Facility CNG Station over a two-year period; OR
 - b. Submit claims for the Volumetric Excise Tax Credit (VETC) and establish an escrow account to deposit any excise tax credit funds received.

These recommendations are designed to make it clear that Foothill Transit is the owner of the natural gas as it is delivered to the facility in the future, thereby establishing Foothill Transit's right to the VETC even though Foothill Transit may in turn contract with Clean Energy as a wholesale natural gas supplier.

Foothill Transit has already requested an Internal Revenue Service (IRS) Revenue Letter Ruling to determine Foothill's status as the alternative fueler for the compressed natural gas (CNG) used in Foothill's bus fleet. This letter ruling was requested because of Clean Energy's claim (and past practice) that it is the alternative fueler and eligible for the VETC. While it is expected that the IRS will rule that Foothill Transit is the alternative fueler, that ruling is not guaranteed, and an IRS response may take up to twelve months or longer. Foothill Transit also understands that Clean Energy has itself submitted a letter ruling from the IRS supporting its position in the dispute.

In light of this dispute and the uncertainty that may result from multiple requests for IRS letter rulings, staff and Clean Energy have discussed a possible settlement concerning the VETC credits received by Clean Energy to date. Although progress appears to have been made toward a settlement that would split the prior receipts equally between the parties, there is no agreement that staff can recommend at this time. Accordingly, staff is proposing two options to the Executive Board.

The options available are to:

1. Pursue a 50-50 sharing the gross \$0.50 VETC credit that Clean Energy has claimed between October 1, 2006 to date along with an acceptable schedule by which those funds would be credited to Foothill Transit for maintenance costs at the Pomona Operations and Maintenance Facility CNG Fueling

- Station; or
2. If Clean Energy does not agree to the first option, continue to pursue the IRS Revenue Letter Ruling, and submit appropriate claims for credits for the period October 1, 2006 to June 30, 2008.

Should the IRS rule that Foothill Transit is the Alternative Fueller, and as such the entity eligible for the VETC, annual revenues would increase by approximately \$2.4 million subject to the provisions of any new transit authorization bill.

Clean Energy has proposed a 50-50 split on the VETC (Volumetric Excise Tax Credit) with Foothill Transit, which would result in a \$1.2 million rebate to Foothill Transit after taxes, not paid in cash, but in a reduction in expenses until the rebate is paid in full. Foothill Transit's counter offer would be 50% of the pre-tax rebate, which would amount to \$2 million which reflects an \$800 thousand difference in the amount offered.

Following discussion, the Executive Board approved staff's above recommendations #1 & 2, and on #3 authorized staff to execute either the a or b recommendation.

Motion: Member Chandler, seconded by Member Storing
Vote: Unanimously carried

Doran Barnes advised that the Executive Board may revisit this issue if Clean Energy proposes another counter offer.

EXECUTIVE DIRECTOR COMMENT

Doran Barnes thanked the Executive Board for their direction on challenging policy issues.

BOARD MEMBER COMMENT

There was none.

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Initiation of litigation pursuant to Government Code Section 54956.9 (c): Two Cases

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION Existing Litigation, Government Code § 54956.9 (a):
Name of Case: Comet Electric, Inc. v. Steton Construction Group, Foothill Transit Authority, Great American Insurance Company, Superior Court, Los Angeles County, Case No. BC383392

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION Existing Litigation, Government Code § 54956.9 (a):
Name of Case: Vonderluhe v. City of Baldwin Park, et al., Los Angeles Superior Court, East District, Case No. KC047730

The Executive Board recessed to Closed Session at 9:58 a.m.

The Executive Board reconvened from Closed Session at 10:24 a.m.

Darold Pieper, Legal Counsel, advised that no reportable action occurred in closed session.

ADJOURNMENT

There being no further business, the Executive Board adjourned at 10:25 a.m.